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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. STEVEN LOWELL STAFFORD, Defendant and Appellant.	E045713 (Super.Ct.No. FVI702198) OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Gil Gonzales and Kelley Johnson, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Steven Lowell Stafford guilty of second degree robbery (Pen. Code, [1] § 211, count 1), and two counts of battery (§ 242, counts 2, and 3). The trial court found true the allegation that defendant had suffered seven prior prison terms (§ 667.5, subd. (b)). The court sentenced him to 10 years in state prison, which consisted of the midterm of three years on count 1, plus seven consecutive one-year terms on the prison priors. With regard to counts 2 and 3, the court ordered defendant to serve 180 days in county jail, but stayed the terms under section 654.

On appeal, defendant contends the court erred by admitting evidence of his prior crimes from 2003 and 2004, and by failing to redact prejudicial information from the documents that supported those prior convictions. We affirm.

FACTUAL BACKGROUND

Prosecution Evidence

At approximately 5:40 p.m. on October 25, 2007, defendant was at a Rite Aid pharmacy in Victorville. Plain clothes Rite Aid loss prevention agent Michael Alonzo was on duty and saw defendant take a pair of sunglasses from a display rack. Defendant removed the security sensor and threw it on the shelf. He then placed the sunglasses on his head and walked through the store. Alonzo contacted Christopher Grehm, another Rite Aid loss prevention agent, and told him to keep an eye on defendant to see if he would buy the sunglasses. Grehm was walking around the store when Alonzo told him about defendant. Alonzo went outside to wait for defendant to exit the store. Defendant

[1] All further statutory references will be to the Penal Code unless otherwise noted.

walked past the cash registers without stopping and then went out the first set of doors. As soon as defendant passed the EAS (electronic alarm system) pillars, Alonzo stopped him, pulled out his security badge, and said, "Excuse me. Rite-Aid security." The sunglasses were still on top of defendant's head. Defendant put his hands out, forcefully shoved Alonzo back toward a wall, and proceeded to run away. Alonzo yelled at defendant to give back the sunglasses and chased defendant. Alonzo grabbed defendant's shirt but could not hold onto him. Defendant ran further away, but then ran back toward Rite Aid. Alonzo grabbed defendant again, and defendant started to flail his arms around. Grehm arrived and helped Alonzo bring defendant to the ground. Defendant was struggling with them, kicking and flailing his arms and trying to get up. Alonzo tried to hold defendant in a headlock to detain him and call the police. While they were struggling, defendant bit Alonzo's right hand. Defendant's girlfriend came over and started yelling at Alonzo and Grehm to get off defendant, and she threatened to call the police. The police arrived shortly thereafter.

After the incident, Alonzo found the sunglasses in the parking lot. They had apparently fallen off defendant's head at some point and had been run over.

Defense Evidence

At trial, defendant's girlfriend testified that she ran to where defendant was in the parking lot and observed that a man was on top of defendant with his arm around defendant's neck. She yelled at him that defendant could not breathe, and she called 911.

Ranell Racine, who was driving by the Rite Aid parking lot at the time of the incident, also testified. As she was driving, she observed some men chasing defendant.

She saw them grab defendant from behind and throw him to the ground. She testified that she saw the men punching and kicking him while he was on the ground. She called 911 as well.

Defense counsel argued at closing that defendant took the sunglasses but that he did not use force in doing so; thus, he was only guilty of petty theft.

Evidence of Uncharged Crimes (*Prior Crimes Evidence*)

The prosecution presented the testimony of Joe Baca, who had worked as a loss prevention agent at the Wal-Mart in Victorville. On January 4, 2003, Baca observed an individual who was later identified as defendant remove the packaging from a cable wire and place it in his pocket. Defendant walked through the garden center, went to the cash register, and paid for an item. He did not pay for the wire. When Baca confronted defendant, defendant denied that he took the wire and tried to run away. Baca and a sales associate grabbed hold of defendant, but defendant started to fight them in order to get away. They tried to restrain defendant's arms and take him down to the ground so they could place him in handcuffs. They got one handcuff on, but defendant started swinging his arms. As defendant was struggling, he bit two of the employees. Defendant pled guilty to petty theft with a prior.

Robert Wiggs also testified at trial. On November 27, 2004, Wiggs was working as a mall security officer at the Mall of Victor Valley. Around 7:00 p.m., he got a call on the mall radio from John McTeer, who was a loss prevention agent at Gottschalks. McTeer said he was going to be detaining a shoplifter from his store. It was reported that the suspect had stolen property in his possession. Wiggs started walking toward the

Gottschalks entrance into the mall. He saw McTeer run out of the store and step in front of a white male (the suspect). The suspect had some rolled-up papers in his hands, and Wiggs suspected he had something concealed in the papers. McTeer saw the suspect start walking backwards with McTeer walking toward him. Wiggs observed McTeer involuntarily jolt backwards and then grab onto the suspect. McTeer and the suspect started fighting. Wiggs intervened. The suspect punched McTeer, so Wiggs grabbed the suspect's right arm. McTeer got the suspect in a headlock, and the suspect bit McTeer's hand. Wiggs started striking the suspect to get him to release his bite and then used pepper spray on him. The suspect punched Wiggs in the jaw and ran out of the mall. Wiggs and McTeer chased the suspect in the parking lot, and the police eventually detained him. Wiggs testified that since the incident had happened so long ago, he was not able to identify the suspect in court. However, Wiggs testified that on the day of the incident, he obtained the suspect's name, which was Steven Stafford (defendant). Defendant pled guilty to petty theft with a prior.

ANALYSIS

I. The Court Properly Admitted the Prior Crimes Evidence

Defendant contends the court abused its discretion under Evidence Code section 352 in admitting the prior crimes evidence, since the evidence was more prejudicial than probative. We find no abuse of discretion.

A. *Standard of Review*

Evidence of other crimes committed by a defendant is admissible under Evidence Code section 1101 when relevant to prove some fact, such as motive, opportunity, intent,

or knowledge, other than the defendant's propensity or disposition to commit such acts. (Evid. Code, § 1101, subd. (b).) "Under Evidence Code section 352, the probative value of the proffered evidence must not be substantially outweighed by the probability that its admission would create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. [Citations.]" (*People v. Cole* (2004) 33 Cal.4th 1158, 1195 (*Cole*).) On appeal, we review the trial court's ruling for abuse of discretion. (*Ibid.*)

B. *Background*

At an in limine hearing, the prosecutor sought to introduce the prior crimes evidence to show that, during the Rite Aid incident, defendant intended to permanently deprive the store of the sunglasses and intended to use force to do so. The prosecutor also argued that the evidence showed defendant's common plan or scheme that, in each of the uncharged offenses, defendant stole an item, and when confronted, he physically fought and bit anyone who attempted to detain him. His common plan was to "fight then bite." Additionally, the prosecutor anticipated the defense would argue that defendant took the sunglasses by mistake (i.e., he forgot they were on his head), and that he bit Alonzo only because the loss prevention agents were choking him. Defense counsel argued that defendant's previous convictions were for either theft or petty theft with a prior, whereas the current charge was for robbery. Defense counsel contended the Evidence Code section 1101, subdivision (b) evidence would thus confuse the issues. The prosecutor, as well as the court, stated that under Evidence Code section 1101, subdivision (b), the underlying facts of the prior crimes came in, not the convictions.

Defense counsel then argued that the evidence should be excluded under Evidence Code section 352. The court agreed that the defense position was fairly obvious.

The prosecution then stated it would present live witnesses to testify regarding the incidents in 2003 and 2004, but it was concerned because only the witness from the 2004 incident could actually identify defendant. The witness from the 2003 incident was not sure he could identify defendant. Thus, the prosecutor wanted to prove identity through the use of defendant's section 969b prior prison packet. The prosecutor suggested that defendant may want to stipulate to his identity so that the section 969b packet would not be before the jury. The court stated it would be a tactical decision on defense counsel's part. Defense counsel stated his position that, if the prosecutor was going to bring in the underlying facts, the defense should be allowed to bring in what the convictions were for, since the cases could have been plea bargained with defendant never having been charged with robbery. Defense counsel contended it was relevant that, in those cases, defendant did not plead to robbery. The prosecutor repeated that Evidence Code section 1101, subdivision (b) did not call for the convictions to come in. The court concluded it would allow the evidence in, asserting this was a "unique factual situation" and was "probably the clearest case of intent on [Evidence Code section] 1101[, subdivision] (b) that [it had] ever seen." The court stated, "You want the charges in, you want the plea bargain in, you want the facts in, you all can have them, okay." The prosecutor said the certified conviction documents did not have pictures but just a name, so if defense counsel would stipulate to defendant's identity, she would not have to prove identity via the section 969b packet. Defense counsel did not say anything in response.

The following week, the prosecutor informed the court that she tried to work out a stipulation with defense counsel as to the prior convictions. She reported that the prior week, defense counsel had said he would stipulate that defendant did commit the prior crimes, but this week he said he would not. The court stated that if defendant did not want to stipulate and wanted the priors to come in, they would come in. Then defense counsel asked that the section 969b packet be redacted to take out any reference that defendant went to prison or had any parole violations. He argued that "it should only be the fact of the conviction and the fact that it's him [that] is relevant." The court stated to defense counsel, "there's always an easy way and there's always a hard way. You chose the hard way, so no." Thus, the court ruled that the entire section 969b packet would be admitted, finding that the probative value of the evidence outweighed its prejudice.

Later that day after Alonzo testified, defense counsel again raised the issue of the Evidence Code section 1101, subdivision (b) evidence. Although the court admonished defense counsel that he had already had an opportunity to address the court on that issue and could not "just put" things on the record as he thought of them, the court allowed defense counsel to speak. Defense counsel argued that defendant was admitting he had the intent to steal the sunglasses; thus, the Evidence Code section 1101, subdivision (b) evidence had no probative value. The prosecutor replied that since defendant pled not guilty, she was required to prove every element of the charges, including intent. She added that she offered the evidence to show common plan or scheme, as well as lack of mistake or accident. The court agreed and stated that it had already ruled on the issue and nothing had changed.

After Baca and Wiggs testified concerning the 2003 and 2004 prior crimes, respectively, defense counsel again objected to the admission of the section 969b packet. The prosecutor reminded the court that the only reason she wanted to submit the section 969b packet was to show identity, and that she had asked defense counsel several times to stipulate to the fact that it was defendant who committed the prior crimes. The prosecutor stated that defense counsel did not appear to be contesting identity now, but was objecting for tactical purposes and to create an issue on appeal. The court agreed. Defense counsel asserted that because the prosecutor's witnesses identified defendant by name, his identity was no longer at issue, and the section 969b packet was no longer relevant. The court noted the objection for the fact that defense counsel was making a record. Defense counsel then proceeded to make a motion for mistrial based on insufficient evidence. The court denied the motion for mistrial.

C. *The Court Did Not Abuse Its Discretion*

The court properly admitted the prior crimes evidence, since it was relevant to show that defendant intended to permanently deprive Rite Aid of the sunglasses and that he intended to use force to do so. The prior crimes evidence also showed that defendant did not take the sunglasses by accident. In addition, the evidence clearly showed a common plan or scheme.

"To be admissible to show intent, 'the prior conduct and the charged offense need only be sufficiently similar to support the inference that defendant probably harbored the same intent in each instance.' [Citations.]" (*Cole, supra,* 33 Cal.4th at p. 1194.) Here, the prior crimes evidence showed that on other occasions, defendant attempted to steal

items from Wal-Mart and Gottschalks, and when apprehended by loss prevention agents, fought and bit the agents in his attempts to leave with the stolen merchandise. The strikingly similar circumstances of defendant's prior and current offenses fully supported the inference that defendant harbored the intent to steal the sunglasses.

To establish the existence of a common design or plan, '"the common features must indicate the existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed need not be distinctive or unusual.' [Citation.]" (*People v. Kipp* (1998) 18 Cal.4th 349, 371.) "[E]vidence that the defendant has committed uncharged criminal acts that are similar to the charged offense may be relevant if these acts demonstrate circumstantially that the defendant committed the charged offense pursuant to the same design or plan he or she used in committing the uncharged acts." (*People v. Ewoldt* (1994) 7 Cal.4th 380, 403), overruled by statute on other grounds, as stated in *People v. Britt* (2002) 104 Cal.App.4th 500, 505.) The common features of defendant's plan included taking items from a store, attempting to leave the store without paying, using force when apprehended by loss prevention agents, and biting the agents in his attempts to escape. The prior crimes evidence was relevant to establish that defendant committed the charged offense in accordance with that plan. Although the prior crimes evidence may have been prejudicial, the testimony describing defendant's uncharged acts was no stronger and no more inflammatory than the testimony regarding the current offenses. (*People v. Ewoldt, supra,* 7 Cal.4th at p. 405.)

Therefore, we conclude the court acted within its discretion under Evidence Code section 352 in finding the probative value of the prior crimes evidence was not substantially outweighed by the potential for prejudice.

Defendant argues that he was not disputing his intent to steal or that he took the sunglasses by accident, and that there was no question of his identity in the current offense. He further contends there was no evidence that he had stolen any property in the 2003 and 2004 offenses; thus, the uncharged offenses "were used to show intent for robbery which was not shown by the convictions or the evidence in the prior cases." He claims "[t]his was a misuse of the evidence for Evidence Code section 1101 purposes." We first note that the prior crimes evidence was not admitted to show identity. Furthermore, by pleading not guilty, defendant placed all the elements of robbery in dispute at trial. (*People v. Lindberg* (2008) 45 Cal.4th 1, 23.) Moreover, contrary to defendant's claim, there was evidence that he stole property in the prior offenses. Regarding the 2003 incident, the loss prevention agent testified that he saw defendant remove the packaging from a cable wire and place it in his pocket, and that defendant did not pay for the wire. In the 2004 incident, the loss prevention agent reported that defendant had stolen property in his possession and radioed the mall security officer for help in detaining "the shoplifter."

Finally, even if the court abused its discretion in admitting evidence of defendant's prior crimes, the error would not require reversal. Even if the prior crimes evidence was disregarded, there was more than enough evidence to support defendant's convictions. The evidence clearly showed that defendant attempted to take a pair of sunglasses from

Rite Aid without paying for them. When Alonzo confronted him, defendant shoved him and ran away. Alonzo and Grehm chased defendant, and he struggled with them, kicking and flailing his arms in order to resist being detained. While they were struggling, defendant bit Alonzo's right hand. Accordingly, it is not reasonably probable that a result more favorable to defendant would have resulted had the prior crimes evidence not been admitted. (See *Cole*, *supra*, 33 Cal.4th at p. 1195.)

II. The Court Properly Denied Defendant's Request to Edit the Documentary Evidence

Defendant contends that, pursuant to Evidence Code section 352, the court erred by refusing to redact certain information from his section 969b packet, which was submitted to prove his identity in the 2003 and 2004 prior crimes. He argues that the court "should have excluded prejudicial matters such as aliases, years and years of lengthy largely uninterrupted terms in jail and prison, narcotics addiction, rejection from [California Rehabilitation Center (CRC)] treatment, parole violations, and other un[]related convictions." We reject defendant's argument for several reasons.

First, when defendant initially objected to the admission of the section 969b packet, he requested only that the court redact any reference that defendant "went to prison [or] any parole violation." An objection "based on a different ground from that advanced at trial, does not preserve the claim for appeal." (*People v. Marks* (2003) 31 Cal.4th 197, 228.) Thus, defendant has forfeited his claim that the court should have redacted references to aliases, narcotics addiction, rejection from CRC treatment, and other unrelated convictions. (*Ibid*.)

Second, we note that defense counsel originally *requested* the entire section 969b packet be admitted, after refusing to stipulate to defendant's identity in the prior convictions. He only changed his argument *after* the prosecution witnesses testified regarding the prior uncharged offenses, asserting that, since the witnesses identified defendant by name, his identity was no longer at issue, and the section 969b packet was no longer relevant. While it did appear, at that point, that the section 969b packet was no longer necessary to prove defendant's identity in the prior crimes, the court had already ruled on the admission of the section 969b packet before the trial began.

Third, we agree with defendant that the record does not demonstrate an actual analysis by the court on his request to redact information from the section 969b packet pursuant to Evidence Code section 352. Rather, the court record shows that the court simply stated, "The Court will find that the probative value outweighs its prejudice." Nonetheless, even if the court erred by failing to redact the section 969b packet, any error was ultimately harmless. The court instructed the jury that the prosecution was required to prove all the elements of robbery and battery beyond a reasonable doubt, in order for the jury to find defendant guilty of those charges. There was sufficient evidence to support defendant's convictions, as discussed *ante*. (See § I.C.) Therefore, it is not reasonably probable that defendant would have obtained a better result if the court had redacted the section 969b packet. (*People v. Marks*, *supra*, 31 Cal.4th at p. 227.)

Defendant claims that this case was "a close call for the jury" that involved a "credibility battle between [defendant] and his nemesis Officer Alonzo," and that without the prior crimes evidence and the unedited section 969b packet, "the jury may well have

acquitted." Such claim is pure speculation. The record demonstrates that the jury believed the testimonies of Alonzo and the other prosecution witnesses. Furthermore, there was no evidence to support the defense's position that defendant took the sunglasses without using force. Defendant did not present any evidence to contradict the evidence that he shoved Alonzo and ran away when Alonzo confronted him about stealing the sunglasses. Moreover, contrary to defendant's claim, this was not a close case, since the jury deliberated only about five hours before reaching a verdict.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P.J.

MILLER
J.